

U.S. ARMY CORPS OF ENGINEERS

NOTICE OF AVAILABILITY FOR LEASING NO. DACW-31-B-07-229 (RE)
DRY BROOKS DAY USE AREA FOOD CONCESSION

Mailing Address and Office Location:

Corps of Engineers - Baltimore District
ATTN: CENAB-RE-C
P.O. Box 1715
Baltimore, Maryland 21203-1715

SITE SELECTED: Dry Brooks Day Use Area, Blue Marsh Lake, Berks County, Pennsylvania

CONSISTING OF: A Lease to serve food and non-alcoholic beverages and cater the Dry Brooks Day Use Area to the general public.

FOR: Commercial Concession - The site will be leased on a competitive basis to the individual or corporation presenting the best plan for service.

Applications will be evaluated by: (1) Understanding of service and soundness of approach, (2) Quality Control, (3) Experience of applicant, (4) Organization and staffing, (5) Financial Capability.

Potential lessees may request Applications for Leasing, describing the site and giving details of the lease requirements through 16 April 2007. To obtain a copy call Ms. Heather Sachs at (410) 962-4648.

Applications will be submitted in sealed envelopes, which will be opened and evaluated on:

Date: 17 April 2007

Time: 11:00 A.M.

Location: Corps of Engineers -Baltimore District
Real Estate Division
10 South Howard Street, 7th Floor
Baltimore, Maryland 21201

Mailing Address:

Corps of Engineers - Baltimore District
ATTN: CENAB-RE-C
P.O. Box 1715
Baltimore, Maryland 21203-1715

APPLICATION INFORMATION PACKAGE
FOR
LEASE OF FOOD CONCESSION
AT
DRY BROOKS DAY USE AREA
BLUE MARSH LAKE
BERKS COUNTY, PENNSYLVANIA

The information below must appear in the lower left corner of the Lease Application envelope.

Sealed application for Lease of Real Property

To be opened:

TIME: 11:00 A.M.

DATE: 17 April 2007

NOTICE NO. DACW-31-B-07-229 (RE)

GENERAL INFORMATION

1. LOCATION AND DESCRIPTION. The site offered for lease, designated as the Dry Brooks Day Use Concession Building, is located within the Dry Brooks Day Use Area at the Blue Marsh Lake Project, Berks County, Pennsylvania. Access to the site is via Palisades Drive off of Rt. 183 to the Dry Brooks Access Road. A general Blue Marsh Lake Project map showing the Dry Brooks Day Use Area is attached as Exhibit "A".

2. FLOOD INFORMATION. The water level will be subject to change, fluctuation from natural causes, and from reservoir operational commitments. Fluctuating water levels on the lake must be taken into account during lease of the facilities.

Summer Recreation Pool	290 MSL
Maximum Pool Elevation	307 MSL

3. DESCRIPTION APPROXIMATE. Description of the property and the maps are believed to be correct, but any error or omission in the description of the property and maps shall not constitute any grounds for nonperformance of the provisions and conditions of the lease or claim by the lessee for any refund or deduction from the rental.

4. PURPOSE OF LEASING. The property will be leased for commercial food concession purposes in furtherance of the objective of the Government to obtain services adequate to meet the public demand at reasonable prices at the Dry Brooks Day Use Area.

5. AUTHORITY OF LAW. The authority of law for granting this lease is Section 4 of the Act of Congress approved 22 December 1944, as amended (76 Stat. 1195; 16 U.S.C. 460d).

6. TERMS AND CONDITIONS OF LEASING.

a. Form of Lease. The successful applicant will be required to enter into a lease with the United States on the form attached as Exhibit "B".

b. Term. The lease will be for a term of fifteen (15) years.

7. RENTAL

a. The annual rent due the United States in consideration of the grant of this lease will be graduated rent, based on a percentage of the total gross receipts. The lessee will furnish income and expense statements within fifteen (15) days after the end of each rental computation period. All rents should be made payable to "USAED, Baltimore District" by certified check, money order, or bank draft. The amount of the graduated rental will be based on the schedule as follows:

GROSS RECEIPTS (GR)	% RENT
Under \$50,000	2.0%
\$50,000-\$200,000	2.1%
\$200,001-\$400,000	2.2%

b. Taxes collected from customers for direct remittance to a taxing authority will not be considered as receipts from the business operations conducted on the leased premises. Annual sales will include the following receipts to be reported as required in sub-paragraph below:

(1) All sales made at the concession building for food and beverages to the public at the Dry Brook Day Use Area.

(2) All receipts from the catering of picnics with the Dry Brooks Day Use Area.

c. The concession area is to be leased "as-is" as of 10 April 2007. **Due to the current poor condition of the premises and to compensate for initial clean-up and repair costs, the annual rent due to the United States will be waived for the first two years of the lease and the payment of utility costs currently reimbursable to the Government (water and electricity) will be waived for the first year of the lease.** Water and electric costs (the total of both in- and off-season) for the years 2004-2006 were as follows:

2004 Electricity:	\$1,237.26	Water:	\$43.80
2005 Electricity:	\$2,521.91	Water:	\$70.84
2006 Electricity:	\$2,123.90	Water:	\$34.50

d. Gross receipts are defined as the total of the concessionaire's receipts from business operations conducted on the premises, including receipts of sub-lessees and licensees. No reductions are permitted, and license fees and taxes collected for direct remittance to a taxing authority, and the exact amount collected from customers for electrical service which is metered to the customer and collected by the Lessee as the servicing agent and paid to the power

company.

2004 Gross Receipts: \$27,201.05

2005 Gross Receipts: \$39,125.68

d. It is desirable that the payment of annual rental be on as current a basis as possible. Since the bulk of the yearly income is expected during the summer recreation season, income for (each month/June, July, August and September) of each year will be computed on a monthly basis. (Income for the other periods of the year will be computed on a quarterly basis). Rental will be calculated and payment made by the 15th day of the month following the computation period. Total annual rental will be based on the cumulative income computed above. Each successive computation of income will include all previously reported yearly income so that the final annual computation includes total cumulative income for the year. The annual rental will be based upon the total annual cumulative income. The total annual rental will be due no later than thirty (30) days after the end of the business year as defined in the annual report or thirty (30) days after billing by the Government, as appropriate.

8. LATE PAYMENT PENALTY: A charge, in an amount to be determined by law or regulation, will be imposed on late payment of rent or other payments due under this agreement for each 30 day period that the payment is overdue. The full late charge will also be applicable to periods of less than 30 days.

9. UTILITIES: The Government will provide at the fair market rate, as determined by the Government, all water and electrical service to the Concession Building. The Government at no cost will provide sewer service together with trash and garbage removal. The payment for all water and electrical services will be on a reimbursable basis and will be under the supervision of the Park Manager, Mr. Alfred Schoenebeck, 610-376-6337. There will no charge for the collection of trash and garbage but the lessee will be required to provide their own trash and garbage containers. The lessee will be responsible for transporting all trash and garbage resulting from concession activities to the designated Government-furnished dumpsters. Sewer service will be provided for the Concession Building at no charge but maintenance of the concession restroom will be the responsibility of the lessee.

10. PROJECT ATTENDANCE: Metered project attendance figures for calendar year 2006 is as follows:

444,000 Visits

254,727 Visitor Hours

104,561 Visitor Days

The figures given represent the number of visits and visitors who pass through the controlled-access areas. Visitors accessing and using the trails located throughout the park do not necessarily pass through the controlled-access day use area gates in order to access the trails.

11. EXISTING EQUIPMENT

Existing equipment located in the leased premises formerly in the possession of the prior Lessee may be available for use, maintenance and/or disposal by the new Lessee. An inventory of such equipment will be conducted after 10 April 2007.

12. RESTRICTIONS IN THE LEASE

a. The lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance, including, but not limited to the operation of arcade type video machines, fireworks, pornography, and inflatable water recreation devices.

b. The lessee shall not sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors.

c. The design and location of all signs and advertisements must meet with the approval of the District Engineer before they may be posted on the premises or elsewhere on project lands.

d. The premises may be occupied and used by the lessee or duly authorized agents, sublessees, assignees, or transferees, solely for the conduct of business in connection with the providing food services on the premises for the general public.

e. No structure or facility may be erected upon the premises, unless and until the District Engineer has approved such structure in writing.

f. Minimum hours of operation are 11 a.m. to 7 p.m., seven days per week unless otherwise authorized by the Park Manager for reasons of flood control, inclement weather, or other factors.

g. The lessee will obtain from a reputable insurance company, liability insurance that provides an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum Combined Single Limit of \$1,000,000, whichever is greater, for any number of person or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, for damage to property suffered, or alleged to have been suffered, by any person or person resulting from the operations conducted on the leased premises.

h. The storage and use of toxic and hazardous materials on the leased premises is prohibited.

i. Applicants are cautioned that the foregoing relates only to the major provisions of the lease. The applicant should carefully examine all provisions of the attached lease and other documents attached hereto and identified herein.

13. PLANS REQUIRED OF APPLICANTS

- a. Proposed services to be offered.
- b. Proposed schedule and hours of operation and the earliest date services can begin.

14. **ARRANGEMENTS FOR INSPECTION:** Arrangements for inspection may be made with Mr. Alfred Schoenebeck, Park Manager, Blue Marsh Lake, or his designated representative, 1268 Palisades Drive, Leesport, Pennsylvania 19533, Telephone: (610) 376-6337.

15. **START OF OPERATIONS:** It is the desire of the Corps of Engineers to have all facilities and services available to the public for the 2007 recreation season. The lessee shall commence operations within ten (10) days after the date of delivery of the lease to the lessee, and shall have the facilities and services available to the general public by the time stated in 15 below. The District Engineer may agree in writing to an extension of time for providing the facilities and services. The District Engineer may also waive the providing of these services during the lease year whenever, in his opinion, the public demand does not reach the anticipated level at the time stated, or when a delay in providing the facilities and services is beyond the control of the lessee.

16. **SCHEDULE OF OPERATIONS:** The food concession herein authorized will be in full operation from Memorial Day to Labor Day, inclusive, but may not be open for business before 15 May and must cease operations by 20 September. The hours of operation will be from 11:00 A.M. to 7:00 P.M. on a daily basis.

17. **USE AND DEVELOPMENT OF PREMISES:** The premises may be occupied and used by the lessee solely for the conduction of business in connection with the services described for the premises for the general use of the public as follows:

- (a) The sale of food and non-alcoholic beverages, including catering services.
- (b) The sale of other items usually associated with grocery stores.

18. **TRASH REMOVAL:** The Government will provide dumpster containers for use by the Lessee for trash and garbage removal. The dumpster containers will be provided at no cost and without a service charge. The Lessee will be required to provide their own on-site trash and garbage containers as follows;

- (a) Trash Containers: 55-gallon metal or plastic drums.

(b) Garbage Containers: 28-gallon metal or plastic cans with secured (tightly closing) lids.

The Lessee will utilize as many containers as necessary to meet health and safety requirements. The trash and garbage containers will be emptied on a daily basis at the provided dumpster containers located at Parking Area F. The Lessee is also responsible for trash and litter pickup on the cement apron in front of the concession building and the cement patio, to include cleaning of the provided picnic tables.

19. PATIO USE: The Government will provide three picnic tables for the patio area. However, it will be the Lessee's responsibility to clean and remove debris from said tables.

20. CATERING SERVICE LIMITATIONS: The lessee, at his discretion, may provide delivery service to picnic pavilions located within the Dry Brooks Day Use Area. In no event shall said deliveries extend to areas outside the Dry Brooks Day Use Area without the prior written approval of the District Engineer. All services to picnic areas shall be coordinated and approved by the Park Manager, Blue Marsh Lake Project.

21. SELECTION CRITERIA: Applications will be evaluated in accordance with the following criteria, listed in descending order of importance.

- a. Understanding of Service and Soundness of Approach
- b. Quality Control
- c. Experience
- d. Organization and Staffing
- e. Financial Capability

a. Understanding of Service and Soundness of Approach. This is the most important evaluation criteria and includes scope of service, work control methods, and interaction between organizational elements.

b. Quality Control. This criteria will measure the applicant's plan for sustained quality of service and organization.

c. Experience. This criteria measures the applicant's past experience in the operation of an retail store concession or any similar type business.

d. Organization and Staffing. This criteria will measure the applicants organizational structure, inspection system, and maintenance and safety plans.

e. Financial Capability. This criteria will require the applicant to include detailed financial information such as a financial management plan, financial statements, financing plans, and projected cash flows and operating costs for the concession.

SUBMISSION INSTRUCTIONS

1. SUBMISSION: Sealed, written Applications should be submitted as follows:

Mailing Address:

Baltimore District Corps of Engineers
ATTN: CENAB-RE-C
P.O. Box 1715
Baltimore, Maryland 21203-1715

Direct Delivery Address:

Baltimore District Corps of Engineers
City Crescent Building
10 South Howard Street, 7th Floor
Baltimore, Maryland 21201

- a. Packages and/or envelopes containing the Application should be marked with Application No. DACW-31-B-07-229 (RE).
- b. The Application with Plans shall be submitted in an original and (3) machine reproduced copies.
- c. A table of contents shall be provided for each section of the application. Key paragraphs and all pages are to be identified. Applicants are advised to respond in the sequence and nomenclature of this solicitation.
- d. Applications submitted in response to this notice will not be returned.

2. DUE DATE: Applications will not be accepted after 11:00 A.M., 17 April 2007. Modifications of applications may be made in sealed envelopes, as for original application, up to that time.

3. REJECTION OF APPLICATION:

- a. The right is reserved, as the interests of the Government may require, to reject at any time any and all applications, to waive any informality in applications received, and to accept or reject any items of any applications unless such application is qualified by specific limitation.
- b. The Government may (1) reject any or all applications if such action is in the public interest, (2) waive informalities and minor irregularities in offers received.
- c. The Government reserves the right to conduct written or oral discussions with all responsible applicants who submit proposal within the competitive range.
- d. A written award or acceptance of application mailed or otherwise furnished to the

successful applicant within the time for acceptance specified in the application shall result in a binding contract without further action by either party. Before the application's specified expiration time, the Government may accept an application whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an application do not constitute a rejection or counteroffer by the Government.

e. The Government may determine that an application is unacceptable if the prices proposed are materially unbalanced between line items or subline items. An application is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the application will result in the lowest overall cost to the Government, even though it may be the low evaluated application, or it is so unbalanced as to be tantamount to allowing an advance payment.

4. **DEFAULT:** In the event that the successful applicant fails to enter into a lease within ten (10) days after receipt of Government notification that this application has been accepted and receipt of a draft lease for execution, or in the event that the successful applicant fails to otherwise comply with the terms of this Notice, the Government may declare the applicant in default.

5. **ADDITIONAL INFORMATION:** Any additional information may be obtained from the Corps of Engineers, Real Estate Division, by contacting Ms. Heather Sachs at 410-962-4648; or Mr. Alfred Schoenebeck, 610-376-6337, Blue Marsh Lake Project Office.

6. **AWARD OF LEASE:** A lease will be awarded to the applicant who provides the best overall value to the Government as to the most favorable in terms of apparent ability to operate the facility efficiently and effectively. The Government reserves the right not to award a lease under this Notice.

7. **DEPOSIT:** Applicants will submit a refundable application deposit of \$100.00. The amount will apply to initial rental for the successful applicant.

APPLICATION INFORMATION

1. CONTENTS OF PROPOSAL: The following information must be provided to assist the Government in selecting the successful lease applicant:

a. GENERAL INFORMATION: Provide name, address, and telephone number of the applicant and, if applicable, the name, address, and telephone number of a representative authorized to act on behalf of the applicant during the term of the lease.

b. EXPERIENCE AND BACKGROUND:

(1) List any/all previous business endeavors with a description of the business operations and status.

(2) Provide a description of any management qualifications, experience and safety record. An applicant must have at least two (2) years of experience in operating an equestrian concession or any similar type of operation involving providing public services.

(3) Provide third party personal and business references.

(4) If applicant is a corporation it must provide:

(a) Articles of Incorporation and by-laws.

(b) Names, addresses, dates of birth, and Social Security numbers of officers and participating principals.

(c) Summary of Corporate Activity

(5) If applicant is a sole proprietor he/she must provide Social Security number, date of birth, and current address.

c. FINANCIAL CAPABILITY (Note: All financial data will be held in confidence):

(1) If applicant is a corporation or limited partnership it must provide a current financial statement prepared by an independent Certified Public Accountant or by an independent licensed public accountant.

(2) If applicant is an individual or partnership he/she/they must provide a

complete and current personal financial statement.

(3) Except for Governmental agencies, provide the names, addresses, and telephone numbers of at least one commercial or institutional credit references from which the applicant has previously obtained financing. Attach a letter authorizing each credit reference to respond to inquiries from the Government.

d. PLAN OF OPERATION AND SERVICE:

(1) Provide a two-year plan for operation and service of the leased premises. This shall include a narrative discussion as well as a proposed budget showing goals and objectives for each year, including projected cash flow, estimated cost of operation, detailed plans of financing (including identity of proposed lenders) and profit objectives.

(2) Discuss the scope and type of service that will be provided to include a proposed menu, price list of menu items, and list of non-food items that are to be offered for sale and their associated cost to the public.

(3) Identify work control methods that will be instituted in the operation of the facility.

(4) Discuss scheduling and hours of operation.

e. PLAN OF ORGANIZATION AND STAFFING

(1) Provide a plan of organization and staffing of the facility that includes organizational structure and manpower requirements to operate and how they will interact.

(2) Identify key positions and their duties and responsibilities as they relate to the business.

(3) If available, provide qualifications, capabilities and experience of key personnel who will be employed at the facility.

f. PLAN OF QUALITY CONTROL

(1) Provide a discussion and plan as to how the organization will function to maintain quality of service and products offered to the public. This shall include how quality will be documented and enforced throughout the operation.

(2) Provide a system of inspection and how it will be maintained and scheduled.

(3) Provide methods for processing and resolving deficiencies found and

complaints from the public.

(4) Provide what type of maintenance and safety program will be implemented.

3. **APPLICANT RESPONSIBILITY:** It is the responsibility of the applicant to make sure that all lease provisions are understood and the conditions of the premises proposed for lease are known.

2. **ASSURANCES REQUIRED:** By submittal of an application, the applicant agrees to provide non-discrimination and Civil Rights assurances, if applicable.

3. **BACKGROUND AND CREDIT CHECK:** The information provided by the applicant may be used by the Corps to conduct a comprehensive background and credit check.

4. **QUESTIONS REGARDING SOLICITATION:** All questions may be directed to the Corps of Engineers, Baltimore District, Real Estate Division, to Ms. Heather Sachs, telephone No. 410-962-4648.

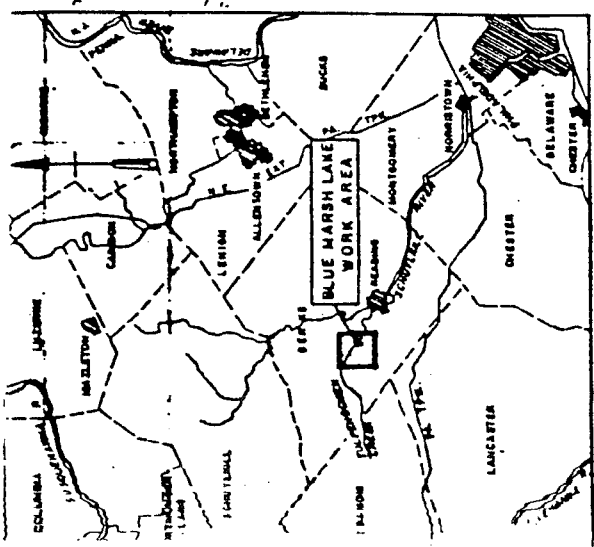
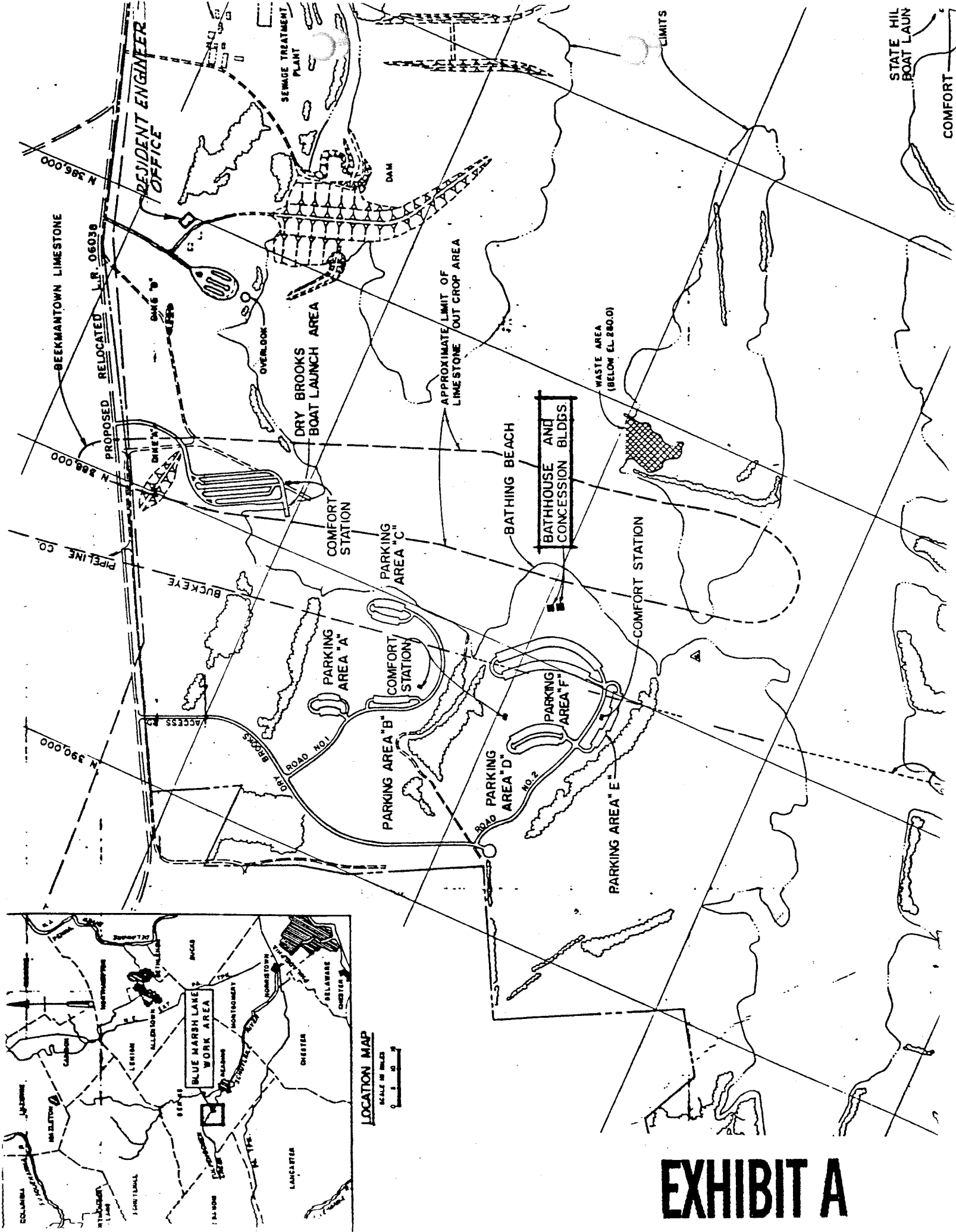


EXHIBIT A

**DEPARTMENT OF THE ARMY
LEASE
FOR COMMERCIAL CONCESSION PURPOSES
DRY BROOKS DAY USE AREA
BLUE MARSH LAKE PROJECT
BERKS COUNTY, PENNSYLVANIA**

THIS LEASE is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and **(NAME AND ADDRESS OF CONCESSIONAIRE)** hereinafter referred to as the Lessee, for the use of approximately 800 square feet of commercial space for food concession purposes at the Dry Brooks Day Use Area, within the Concession Building, at the Blue Marsh Lake Project, Berks County, Pennsylvania.

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in **Exhibits A & B** attached hereto and made a part hereof, hereinafter referred to as the premises, for commercial concession purposes.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said premises are hereby leased for a term of fifteen (15) years, beginning **April 23, 2007** and ending **April 22, 2022**.

2. CONSIDERATION

a. The rent due to the United States in consideration of this lease shall be calculated using the revised Graduated Rental System (RGRS). The total gross receipts for each rental payment period will be multiplied by the applicable percentage rate and the resulting total due payable within twenty-five days to the F.A.O., USAED Baltimore, U.S. Army Corps of Engineers, Baltimore District, and delivered to the Chief, Real Estate Division, ATTN: CENAB-RE-C, U. S. Army Corps of Engineers, P.O. Box 1715, Baltimore, Maryland 21203-1715.

The percentage rate for the upcoming rental year will be selected from the following RGRS rental rate chart, using the line for the total gross receipts of the ending rental year.

GROSS RECEIPTS (GR)	% RENT
Under \$50,000	2.0%
\$50,000-\$200,000	2.1%
\$200,001-\$400,000	2.2%
\$400,001-\$600,000	2.3%
\$600,001-\$800,000	2.4%
\$800,001-\$1,000,000	2.5%
\$1,000,001-\$1,200,000	2.6%
\$1,200,001-\$1,400,000	2.7%
\$1,400,001-\$1,600,000	2.8%
\$1,600,001-\$1,800,000	2.9%
\$1,800,001-\$2,000,000	3.0%
\$2,000,001-\$2,200,000	3.1%
\$2,200,001-\$2,400,000	3.2%
\$2,400,001-\$2,600,000	3.3%
\$2,600,001-\$2,800,000	3.4%
\$2,800,001-\$3,000,000	3.5%
\$3,000,001-\$3,200,000	3.6%
\$3,200,001-\$3,400,000	3.7%
\$3,400,001-\$3,600,000	3.8%
\$3,600,001-\$3,800,000	3.9%
\$3,800,001-\$4,000,000	4.0%
\$4,000,001-\$4,200,000	4.1%
\$4,200,001-\$4,400,000	4.2%
\$4,400,001-\$4,600,000	4.3%
\$4,600,001-\$4,800,000	4.4%
\$4,800,001-\$5,000,000	4.5%
\$5,000,001 and above	4.6%

(1) Gross receipts are defined as the total of the concessionaire's receipts from business operations conducted on the premises, including receipts of sub-lessees and licensees. No reductions are permitted except the costs of hunting and fishing licenses, and license fees and taxes collected for direct remittance to a taxing authority, and the exact amount collected from customers for electrical service which is metered to the customer and collected by the Lessee as the servicing agent and paid to the power company.

(2) The rental payment shall be annually with payment due by 1 December 2004, for the first year. Rental will be calculated and payment made by the 1st of December for each year of the lease period. Total annual rental will be based on the cumulative income computed above.

The annual rental will be based upon the total annual cumulative income and will be provided to the Lessee by 1 November. The total annual rental will be due no later than thirty (30) days after the end of the business year as defined in the annual report or thirty (30) days after billing by the Government, as appropriate. The rental year will be a partial year the first year, beginning on the date of this lease and ending on 31 December 2004; for each rental year thereafter, the year will begin on 1 January and end on 31 December.

(3) RENTAL PAYMENT CALCULATION FORM

Reporting Period _____

- | | | | |
|----|---------------------------------|----|-------|
| a) | Gross receipts for this period: | \$ | _____ |
| b) | Rental rate | x | _____ |
| c) | Amount due (a x b) | \$ | _____ |

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collections Act of 1982, 31 U.S.C. § 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from the due date. An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charges.

3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to **(NAME AND ADDRESS OF THE CONCESSIONAIRE)**, and if to the United States, to the **District Engineer, Attn: Chief, Real Estate Division, CENAB-RE-C, P. O. Box 1715, Baltimore, Maryland 21203-1715**; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been given if and when enclosed in a properly sealed envelope or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to “Secretary of the Army,” “District Engineer,” “said officer” or “Lessor” shall include their duly authorized representatives. Any reference to “Lessee” shall include sub-lessees, assignees, transferees, concessionaires, and its duly authorized representatives.

5. USE AND DEVELOPMENT OF THE PREMISES

a. The premises may be occupied and used by the Lessee or duly authorized agents, sublessees, assignees, or transferees solely for the conduct of business in connection with the recreational development of the premises for the general use of the public. Lessee shall provide facilities and activities in accordance with the Use and Development Plan and its architectural theme and sign plan, as supplemented or amended, (Development Plan) and attached hereto as **Exhibit C**.

b. No Structure may be erected or altered upon the premises unless and until said Development Plan has been approved in writing by the District Engineer. The District Engineer may require the Lessee, upon completion of each of the proposed developments, to furnish a complete “as built” site plan and “as built” construction plans of all facilities with certification by a Professional Engineer that the construction meets all codes and standards.

c. The District Engineer may agree in writing to an extension of time for providing the facilities and activities designed in said Development Plan or may waive the providing thereof for other than those specified in the first lease year as designated in said Development Plan, whenever, in the opinion of the District Engineer, the public demand does not reach the anticipated level at the time stated, or when a delay in providing the facilities and services is beyond the control of the Lessee, provided, however, that at the discretion of the District Engineer, such undeveloped areas may be withdrawn from the leased premises.

d. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. Modifications to said Development Plan must be approved in writing by the District Engineer prior to implementation of the change.

e. All structures and equipment furnished by the Lessee shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**.

7. PERFORMANCE OF CONTRACT

The Lessee agrees to obtain and deliver to the District Engineer, within thirty (30) days, either a valid surety bond issued by a surety corporation licensed by a state regulatory entity, a performance deposit, or an irrevocable letter of credit issued by a Federally insured financial institution in a form satisfactory to the District Engineer. Said surety bond, performance deposit, or letter of credit shall be in the sum of \$5,000.00, payable to the United States, and conditioned

upon full and satisfactory performance of the obligations of the Lessee herein set forth in this lease. To insure favorable performance by the Lessee of all the covenants, terms and conditions of this lease, said deposit shall be retained or said bond or letter of credit shall be kept in full force and effect by the Lessee until released in writing by the District Engineer upon completion of the development set out in said Development Plan, attached as **Exhibit C**, as supplemented or amended, is completed.

7. CONDITION OF PREMISES

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and of the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as **Exhibit D** and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY**.

8. RATES AND PRICES

a. The rates and prices charged by the Lessee or its sub-lessees shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The District Engineer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. The Lessee shall keep such rates and prices posted at all times in an appropriate and conspicuous place on the premises. The District Engineer may require submission of a schedule of the rates and prices at any time.

b. However, no user fees may be charged by the Lessee or its sublessees for use of the facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

9. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or at the election of the District Engineer,

reimbursement may be made therefore by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

10. RIGHT TO ENTER AND FLOOD

a. The right is reserved to the United States, its officer, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government purposes; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

b. The Lessee expressly agrees to make no claim under flood insurance issued under any Federal Government program for loss to any property of the Lessee located on the premises which arises from or is incident to the flooding of the premises by the Government. Government operation of the project floods the premises to elevation 307 NGVD. Any flooding above this elevation will be presumed to arise from non-government causes and may be covered by flood insurance.

11. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or employees others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

12. INSURANCE

a. At the commencement of this lease, the Lessee will obtain from a reputable insurance company, or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum Combined Single Limit of **\$250,000.00**, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee under the terms and conditions of this lease, and the Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, a certificate of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance coverage required. The policy shall provide that the insurance company give the District Engineer thirty (30) days written notice of any cancellation, non-renewal or change in such insurance.

b. The Lessee's sublessees and licensees, at the commencement of operating under the terms of this lease, shall obtain from a reputable insurance company or companies liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sublessees and licensees under the terms of this lease. The Lessee shall require any insurance carrier or carriers to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

c. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the District Engineer thirty-(30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

d. As those structures and improvements on the premises constructed by or at the expense of the United States, for such periods the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration, or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration, or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however, that the insurer, after payment of any proceeds to the Lessee in accordance with the provisions of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore, or replace the leased premises or any part thereof.

13. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without

compensation therefore, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

14. NON-DISCRIMINATION

The Lessee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the premises. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

15. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the Lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the Lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply the applicable codes.

16. TAXES

Payment of any and all taxes imposed by the state or its political subdivisions upon the property or business of the Lessee on the premises is the responsibility of the Lessee.

17. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

18. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to Federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal Lands. Then Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

19. TRANSFERS, ASSIGNMENTS, SUBLEASES

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease or a controlling interest therein (including, without limitation, mergers, consolidations, reorganizations, or other business combinations), nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease, nor shall this lease be assignable or transferable by process or operation of law including, but not limited to insolvency proceedings, bankruptcy, or intestacy, or in any other manner whatsoever.

(1) Failure to comply with this condition or the procedures described herein shall constitute a material breach of this lease for which this lease may be revoked immediately by the District Engineer, and, the Secretary shall not be obligated to recognize any right of any person or entity to an interest in this lease or to own or operate the facilities authorized hereunder acquired in violation hereof.

(2) The Lessee shall advise the person(s) or entity proposing to enter into a transaction described in Subsection a. above that the District Engineer shall be notified and that the proposed transaction is subject to review and approval by the District Engineer. The Lessee shall request in writing the District Engineer's approval of the proposed transaction and shall promptly provide the District Engineer all relevant documents related to the transaction, and the name(s) and qualifications of the person(s) or entity involved in the proposed transaction.

b. The District Engineer, in exercising discretion to approve or disapprove transfer, assignments, or subleases, shall among other matters take into consideration the management qualifications of the individuals or entities that would thereby obtain a controlling interest in the facilities or services authorized hereunder, the experience of such individuals or entities with similar operations, and the ability of such individuals or entities to operate the operations authorized hereunder in the public interest.

c. The term "controlling interest" in a Lessee's ownership shall mean, in the instance of a corporate Lessee, an interest beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of substantial managerial influence over the operations of the Lessee, and, in the instance of a partnership, joint venture, or individual Lessee, any beneficial ownership of the capital assets of the Lessee sufficient to permit substantial managerial influence over the operations of the Lessee. The District Engineer will determine at

the request of interested parties whether or not an interest in a lease constitutes a controlling interest within the meaning hereof.

d. The Lessee may not enter into any agreement with any entity or person, except employees of the Lessee, to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without the prior written approval of the District Engineer.

e. No mortgage shall be executed, and no bonds, shares of stock, or other evidence of interest in, or indebtedness upon the assets of the Lessee located on the premises, including this lease, shall be issued, except for the purposes of installing, enlarging, refinancing or improving concession plant, equipment and facilities, provided that, such assets, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of a default on such a mortgage, encumbrance or other such indebtedness, or of other assignment, transfer, or encumbrance, the creditor or any assignee thereof shall succeed to the interest of the Lessee in such assets but shall not thereby acquire operating rights or privileges. Such rights or privileges shall be subject to disposition by the District Engineer.

f. The Lessee may allow independent private service companies to enter and conduct business on the premises for the benefit of the Lessee's customers on an as-called basis without a formal sublease or license agreement, provided that the service is occasional and incidental to the Lessee's operation and that any compensation paid to the Lessee is included in gross receipts.

g. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

20. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and with the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of its terms and conditions and continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving six months prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES**.

c. In addition to the above right of revocation, if the rent or other payments provided to be paid by the Lessee or any part thereof shall be in arrears and unpaid for thirty (30) days after the same shall become due, then, and in such case, the District Engineer may elect to revoke this lease by notification in writing to the Lessee.

21. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sublessee and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to the health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee will be obligated to pay rental, notwithstanding any interruption or suspension of activities. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

22. PUBLIC USE

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

23. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises. Specifically prohibited are the use of gambling devices, such as slot machines, video gambling machines, or other casino type devices that would detract from the family atmosphere. District Engineers may allow the sale of state lottery tickets, in accordance with state and local laws and regulations, as long as the sale of tickets constitutes a collateral activity, rather than primary activity, of the Lessee. The Lessee shall not install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special permits issued in conjunction with

special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

24. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **USE AND DEVELOPMENT OF THE PREMISES** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber.

25. ACCOUNTS AND RECORDS

a. The Lessee shall maintain complete and accurate records and no later than 120 days following the end of the Lessee's fiscal year shall submit to the District Engineer reports and data for the preceding year to include a financial statement for the activity covered by the lease and compiled by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state.

b. The District shall have the right at any time (1) to verify all financial reports and copy the books, correspondence, memoranda, income tax returns and other records of the Lessee and sublessees, if any, and of the records of proprietary or affiliated companies, if any, related to this lease during the period of the lease (This right shall extend for such time thereafter as may be necessary to accomplish such verification, but in no event more than five (5) years after the close of the business year of the Lessee); (2) to require the Lessee to furnish an audited statement of gross receipts for the concession operation, including the gross income of any sublease operation, and certification of the accuracy of the reported income.

c. Statements will be prepared by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state. Audits will be in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. Financial statements requiring audits and accompanied by remarks such as "prepared from client records without audit" are unacceptable. Audited and reviewed financial statements shall contain appropriate footnotes. The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial report are consistent with those included in the Federal tax returns. If the amounts are not consistent, then a statement showing the differences shall be included. An audit of Lessees tax returns is not required.

26. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state,

interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, include sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

27. ENVIRONMENTAL BASELINE STUDY

An Environmental Baseline Study (EBS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as **Exhibit E**. Upon expiration, revocation or termination of this lease, another EBS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

28. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

29. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

30. LIGHTS SIGNALS AND NAVIGATION

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained at the expense of the Lessee.

31. HUNTING AND TRAPPING

The Lessee shall not hunt or trap or allow hunting or trapping on the premises.

32. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for any period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites, said system to be acceptable to the District Engineer.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees, residing on the premises, for security purposes, if authorized by the District Engineer.

33. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. § 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to written decision by the District Engineer.

(2) For Lessee claims exceeding \$100,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved;
or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the lessee's affairs.

d. For Lessee claims of \$100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files as suit as provided in the Act.

f. At the time a claim by the lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal or action arising under the lease, and comply with any decision of the District Engineer.

34. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

35. OFFICIALS NOT TO BENEFIT

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

36. SEVERAL LESSEES

If more than one Lessee is named in this lease the obligations of said Lessees herein contained shall be joint and several obligations.

37. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as all other conditions of this lease.

38. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U. S. C. § 403), and Section 404 of the Clean Water Act (33 U. S. C. § 1344).

39. REPRESENTATIVE OF THE DISTRICT ENGINEER

The official representative for the District Engineer, Philadelphia District, at the Blue Marsh Lake Project is Mr. Alfred Schoenebeck, Park Manager, at 610-376-6337.

40. UTILITIES

The Government will furnish electricity and water to the Lessee at the current fair market Rate. Consumption of electricity and water will be metered at the Concession Building and meters will be read on a monthly basis by both the Government and the Lessee. No changes or modifications to either the electrical or water system will be made by the Lessee without the express written approval of the Government. Propane gas containers are not available from the Government and the Lessee will be required to obtain their own propane containers or propane service contract for use at the Concession Building.

41. TRASH AND GARBAGE REMOVAL

The Government will provide dumpster containers at the north end of Parking Area F for use by the Lessee for trash and garbage removal. The trash and garbage containers will be emptied when full and at a minimum on a daily basis. The Lessee is also responsible for trash and litter pickup on the cement apron area in front of the concession building, to include the cement patio area. The Government will provide three picnic tables for the patio area, however it will be the Lessee's responsibility to clean and remove debris from said tables. The Lessee will be required to provide their own on-site trash and garbage containers as follows:

Trash Containers: 55-gallon metal or plastic drums

Garbage Containers: 28-gallon metal or plastic cans with secured (tightly closing) lids.

The Lessee will utilize as many containers as necessary to meet health and safety requirements. The trash and garbage containers will be emptied on a daily basis at the provided dumpster containers located at Parking Area F.

42. HOURS OF OPERATION

The Lessee will provide food services between the hours of 11:00 a.m. and 7:00 p.m. on a daily basis. If the hours of operation of the recreational area are extended or modified, then the Lessee may request an extension and/or modification of the operating hours of the concession facility. Closing of the concession facility during periods of severe inclement weather will be coordinated with the Park Manager.

43. TERMS OF OPERATION

The Lessee shall be in full operation from Memorial Day to Labor Day, inclusive, but may not be open for business before 15 May and must cease operations by 20 September of each year.

44. VENDING MACHINES

The Lessee may utilize vending machines at the concession site subject to the approval of the Park Manager as to the size, location and safety of the machines.

45. ADVERTISEMENTS

The Lessee shall post all advertisements for services, menu listings, prices and other information related to the concession operations at areas and locations as designated by the Park Manager. The size, shape and message of the advertisements will be in compliance with guidance provided by the Park Manager.

46. FOOD AND BEVERAGE CONTAINERS

The Lessee shall provide all food and beverages in approved containers and the use of glass containers or containers not meeting safety, health or sanitary standards are prohibited.

47. SEWER SERVICE

The Government will provide sewer services to the Lessee at the Concession Building at no charge. The Lessee will maintain the buildings restroom in a safe and sanitary manner at all times.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this _____ day of _____, _____.

Real Estate Division
U.S. Army Corps of Engineers
Baltimore District

THIS LEASE is also executed by the Lessee this _____ day of
_____, _____.

(NAME AND ADDRESS OF LESSEE/CONCESSIONAIRE)

ACKNOWLEDGMENT

STATE OF _____)
 : ss
COUNTY OF _____)

On this _____ day of _____, _____, before me the undersigned Notary Public, personally appeared _____, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:

CORPORATE CERTIFICATE

I, _____, certify that I am the _____ of
 _____; that _____ who signed the

 _____ of the

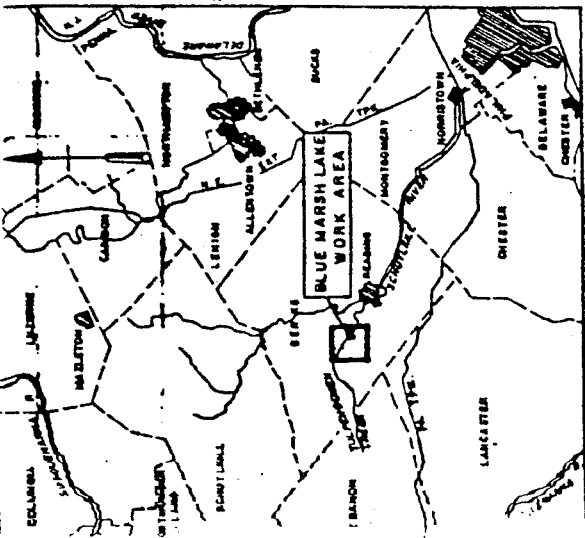
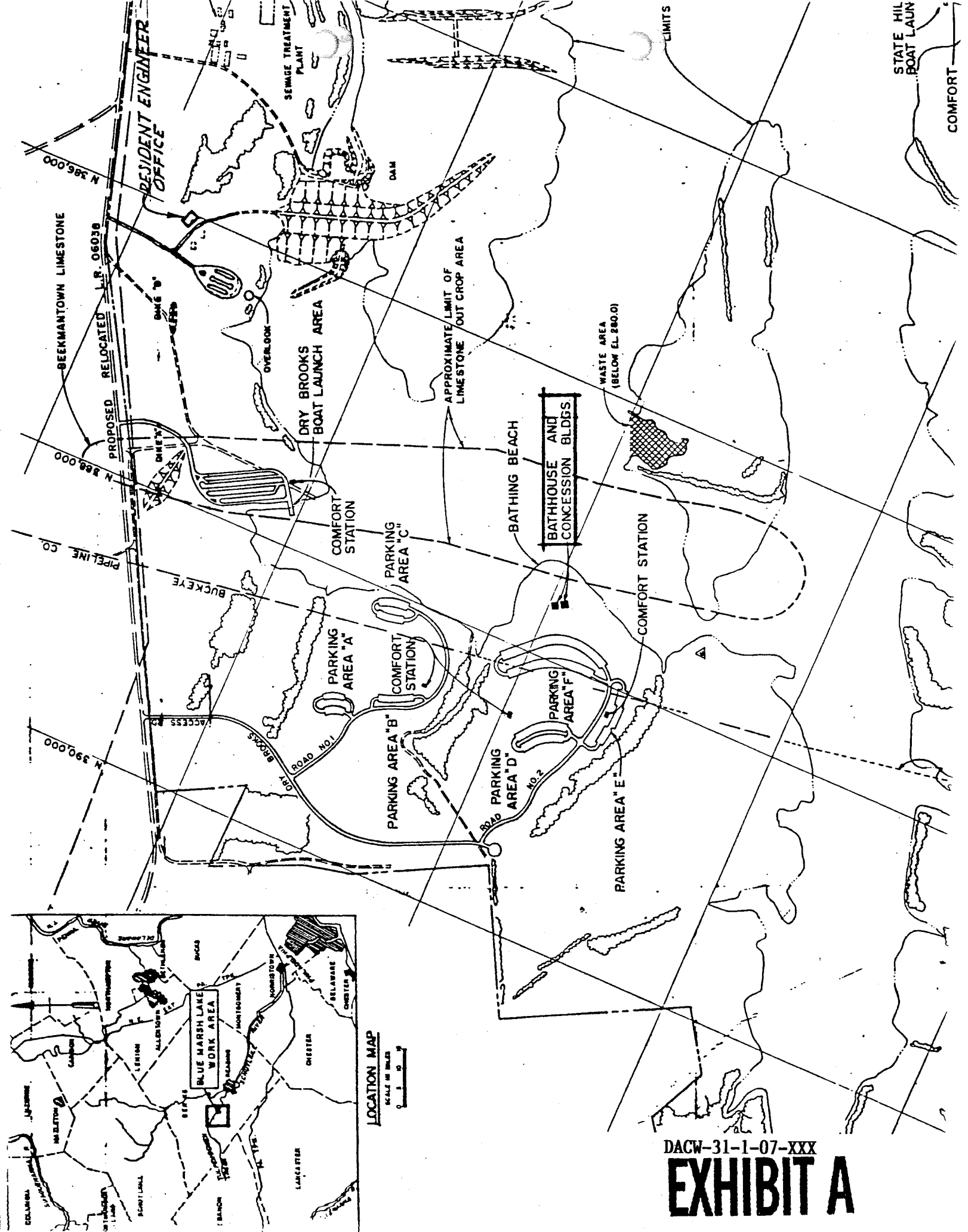
 _____ of the

 _____ of the corporation in executing said instrument.

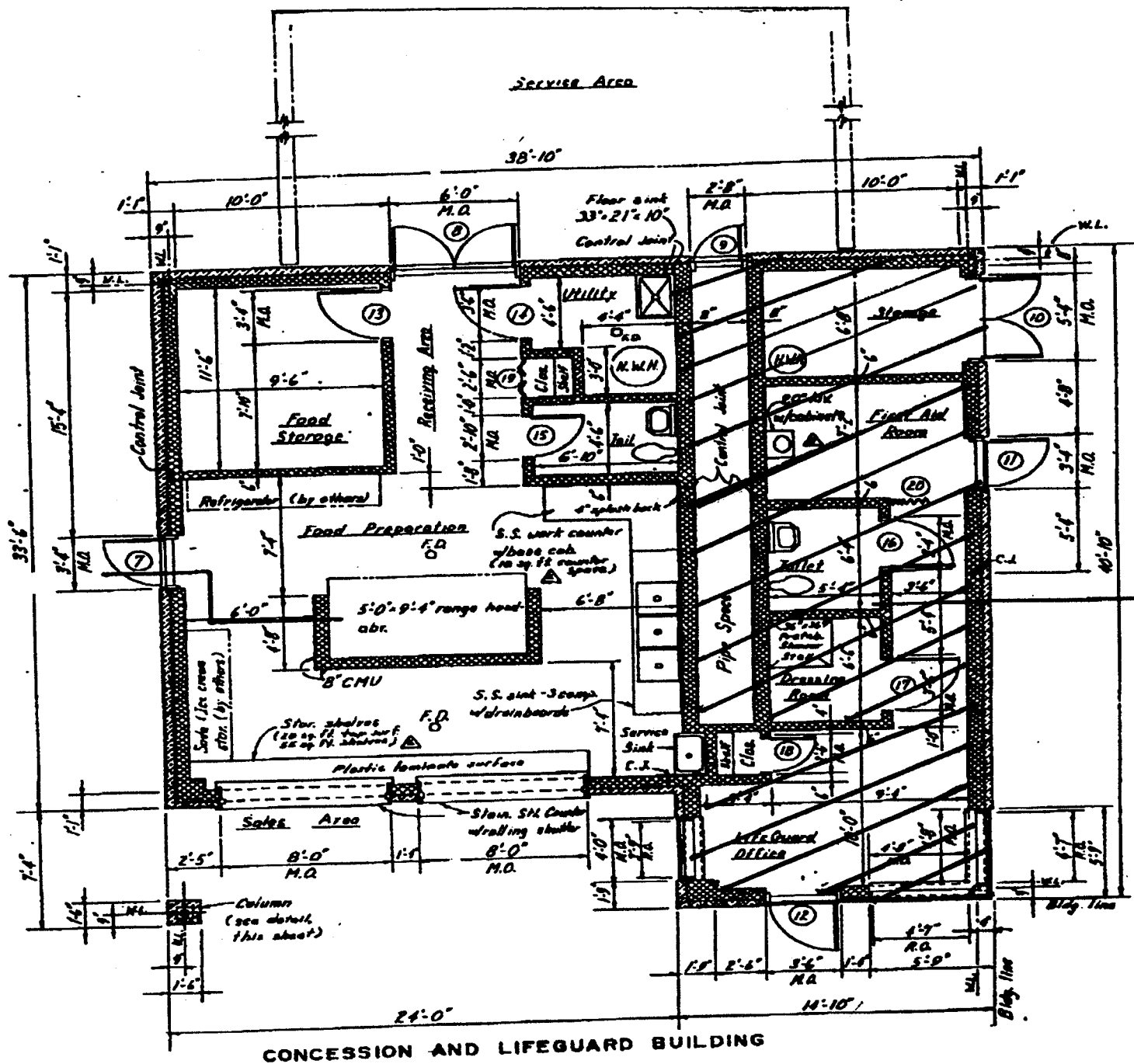
Date _____

Corporate Secretary or other appropriate officer
(Excluding the officer executing the instrument)

{Corporate Seal}



DACW-31-1-07-XXX
EXHIBIT A



CONCESSION AND LIFEGUARD BUILDING

DACW-31-1-07-XXX

EXHIBIT B

CONCESSION BUILDING
GOVERNMENT-OWNED PROPERTY

UTILITY ROOM

Propane Gas Fired Water Heater

RESTROOM

Toilet

Mirror

Sink

Wall Mounted Stainless Steel Waste Receptacle

Wall Mounted Electric Hand Dryer

FOOD PREPARATION AREA

Stainless Steel Updraft With Filters

Fire Extinguishing System

Three (3) Bay Stainless Steel Sink

DEVELOPMENT PLAN

DACW-31-1-07-XXX

EXHIBIT C

INVENTORY AND CONDITION REPORT

DACW-31-1-07-XXX

EXHIBIT D

ENVIRONMENTAL BASELINE SURVEY (EBS)
Statement of Findings

1. Project: Blue Marsh Lake, Pennsylvania
Site: Concession Building – 800 square feet – (Food Service)
Type of Outgrant: Lease
Action: Fifteen (15) Year Term
2. Purpose: To develop sufficient information to adequately assess the health and safety risks, define the nature, magnitude, and extent of any environmental contamination, identify the potential environmental contamination liabilities associated with a real property transaction as required under AR 200-1, "Environmental Protection and Enhancement", as amended by Memorandum from ENVR-EH, to CEMP-RI dated 1 November 1990, Subject: Real Property Transactions and Preliminary Assessment Screening (PAS).
3. Comprehensive Records Search: The Real Estate Division conducted a comprehensive search of available real estate records of the District. Attached hereto is a certification which specifies the records which were included in the search, the date of the search, and a summary of the records search.
4. Summary: The record search did not indicate any spills, disposals, storage, or release of toxic and hazardous substances. The site was used as farmland before Government acquisition. No toxic or hazardous substances have ever been discovered or know to have been stored or spilled at the site.
5. Findings: An EBS was performed to determine if any hazardous substances were stored or released that would prohibit the real estate transaction. The conclusion of this EBS is that there are no specific or unusual environmental concerns that would preclude public use of the property. This EBS is a real property transaction record to serve as documentation for the hazardous substance contamination condition of the property. The proposed real property transaction should proceed as planned.

Signed: _____
Prepared By: Heather Sachs
Realty Specialist

Date: _____

Signed: _____
Approved By: Susan K. Lewis
Acting Chief, Real Estate Division

Date: _____

Signed: _____

Date: _____

DACW-31-1-07-XXX

EXHIBIT E

CERTIFICATION OF RECORDS SEARCH
REAL ESTATE DIVISION

Project: Blue Marsh Lake, Pennsylvania
Site: Concession Building – 800 square feet
Type of Outgrant: Lease for food service.
Action: New 15-year lease

1. A comprehensive search of pertinent Real Estate records conducted on 12 July 2003 included the following:

- (a) Real Estate Compliance Inspection Report dated 1 August 2006.
- (b) Real Estate Audit Records and related mapping.
- (c) An on-site inspection of the facility was conducted on 1 – 2 August 2006.

2. Summary of Real Estate records search:

- (X) There is no evidence that this property has been the site of a release, storage or disposal of any hazardous substances.
- () There is no evidence that the "threshold" identified in 42 USC 9620 (h) for reporting the storage, release, or disposal of hazardous substances has been exceeded.
- () The records search delineated in paragraph 1 (above) indicates that the "threshold" identified in 42 USC 9620 (h) for reporting the storage, release, or disposal of hazardous substances has, or may have been exceeded. See attached Statement of Findings prepared by this office.

Signed: _____

Heather Sachs
Realty Specialist

DATE

Concurrence: _____

Craig R. Homesley
Chief, Civil Projects Support Branch
Real Estate Division

DATE

Accepted By: _____

(LESSEE/CONCESSIONAIRE)

DATE